

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

APPEAL FROM ORDER No 145 of 1999

For Approval and Signature:

Hon'ble MR.JUSTICE A.M.KAPADIA

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1. Whether Reporters of Local Papers may be allowed : NO
to see the judgements?
2. To be referred to the Reporter or not? : NO
3. Whether Their Lordships wish to see the fair copy : NO
of the judgement?
4. Whether this case involves a substantial question : NO
of law as to the interpretation of the Constitution
of India, 1950 of any Order made thereunder?
5. Whether it is to be circulated to the Civil Judge? : NO
1 - 5 No
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SATTARBHAI RASULBHAI MEMON

Versus

EXECUTIVE ENGINEER

Appearance:

MR JA ADESHRA for appellant
MR HS MUNSHAW for Respondent

CORAM : MR.JUSTICE A.M.KAPADIA

Date of decision: 01/07/1999

ORAL JUDGEMENT

1. By means of filing of this Appeal from Order,
appellant herein has brought in challenge the order dated
24.12.1998 recorded in M.A.C.P. Civil Misc. Application
No. 1 of 1997 by learned Motor Accident Claims Tribunal
(Auxi.), Banaskantha District at Palanpur, whereby the
application submitted by the appellant-applicant under
Order 9 Rule 9 of the Civil Procedure Code ('Code' for
short hereinafter) praying to restore the MACP No. 429

of 1987 which came to be dismissed for default of non-appearance of the appellant-applicant, was dismissed by the learned Tribunal.

2. A few facts leading to the present Appeal from Order may be narrated in nut-shell as under:

2.1. The present appellant, along with his parents who died during the pendency of MACP, has filed MACP No. 429 of 1987 claiming compensation of Rs.1,50,000/- from opponents on account of the death of bread-winner Mohmedbhai, who lost his life in a vehicular accident which occurred on 4.6.1987. The said claim petition was contested by the respondent herein.

2.2. The said claim petition came up for hearing on 17.1.1996 before the learned Tribunal. On that day neither the appellant nor his advocate remained present. Therefore, the learned Tribunal recorded the order of dismissal of the petition for non-appearance of the appellant-applicant and his advocate. The said fact came to the notice of the appellant only on 26.12.1996 as his advocate did not inform him about the order passed in MACP No. 429 of 1987. The present appellant, therefore, filed the application under the provisions of O.9 R.9 of the Code for restoration of the MACP which was dismissed for default on the grounds mentioned in the application and mainly on the ground that the advocate for the appellant-applicant did not convey the date of hearing nor informed him about the order of dismissal of MACP for non-prosecution.

2.3. In the said application for restoration, prayer to condone the delay of 305 days in filing the application was also made.

2.4. The learned Tribunal after considering the submissions made before it and considering the evidence emerging from the record of the case, came to the conclusion that there was gross negligence and inaction on the part of the appellant-applicant and since the appellant-applicant has failed to satisfactorily explain the delay of more than 11 months, such delay cannot be condoned. The learned Tribunal has further observed that the reasons given by the appellant-applicant for non-appearance before the Tribunal when the MACP was listed for hearing were not convincing and on all these counts, the learned Tribunal rejected the application for restoration of MACP No. 429 of 1987. Being aggrieved by the said order the appellant-applicant is before this Court.

3. Learned advocate Mr. J.A. Adeshra for the appellant and learned advocate Mr. Munshaw for the respondent have made their submissions.

4. It was contended by learned advocate Mr. Adehsra for the appellant that MACP No. 429 of 1987 was filed in the year 1987 for the mishap which had taken place on 4.6.1987. The accident took away the life of a promising young boy - Mohmedbhai who was the bread-winner of the family. Parents of the deceased also died during the pendency of the petition and, therefore, only surviving heir, brother of the deceased, prosecuted the case. Further more, the matter could not be proceeded for more than nine years and, therefore, the appellant was not aware of the date of hearing which was fixed on 17.1.1996 abruptly and the said date of hearing was also not conveyed by his advocate and as a result thereof the appellant could not remain present and resultantly the order dismissing MACP No. 429 of 1987 was recorded. The matter does not rest here. He further contended that after recording the order on 17.1.1996, communication thereof was not sent to the appellant by his advocate upto 26.12.1996. He, therefore, contended that the learned Tribunal ought to have considered all these aspects while deciding the application for restoration of MACP No. 429 of 1987. In view of the aforesaid submission, he urged that the Appeal from Order may be allowed by quashing and setting aside the order recorded in Civil Misc. Application No. 1 of 1997 by restoring MACP No. 429 of 1987 to its original file.

5. Learned advocate Mr. Munshaw has supported the judgment throughout and according to him, the appellant and his advocate remained in slumber for a pretty long time and they were not sincere about prosecuting the remedy and, therefore, after giving ample opportunity, the said order was recorded which does not require interference by this Court and the persons who remained in slumber for pretty a long time should not be allowed to take advantage of their own wrong. He, therefore, urged that the Appeal from Order may be dismissed.

6. It is true that on account of non-appearance of the appellant and his advocate when MACP No. 429 of 1987 was called out for hearing, it came to be dismissed for want of prosecution. It is also true that Civil Misc. Application No. 1 of 1997 was filed after delay of 305 days. However, this Court cannot be oblivious of the fact that Motor Vehicles Act being a social benevolent legislation drafted with a laudable object to compensate

the victim of road accidents or heirs and legal representatives of the victims of road accident, the learned Tribunal ought to have considered this aspect while dismissing the petition. It is equally true that the Tribunal is not bound to convey the date of hearing to the party concerned. But before recording the order of dismissal for non-prosecution, the learned Tribunal ought to have waited instead of straightaway recording the order of dismissal for non-prosecution. The learned Tribunal could have instructed the advocate concerned to convey the date of hearing to the parties and even then on the subsequent date the advocate and the appellant had remained absent the learned Tribunal could have recorded the order. Even according to me, as I have observed in this paragraph, the Tribunal is not bound to convey the date of hearing to the party concerned. However, in the interest of justice when the matter could not be proceeded for a period of more than nine years, the learned Tribunal could have issued notice to the appellant intimating the date of hearing. Even thereafter the appellant had remained absent, then the Tribunal could have recorded the order of dismissal for non-prosecution.

7. So far as the order passed by the learned Tribunal dismissing the CMA No.1 of 1997 is concerned, it may be appreciated that there was a delay of 305 days in filing the CMA for restoration and the delay was sufficiently explained since the dismissal order was not conveyed to the appellant by his advocate. Non-filing of affidavit by the advocate concerned which was the reason assigned by the learned Tribunal for dismissal of the application for restoration, is not convincing. When the appellant himself has stated on oath, it is sufficient for the Tribunal to believe the averments made in the affidavit. I also do not agree with the observation made by learned Tribunal that since the driver of the offending vehicle was not shown as opponent No.1 in the restoration application, the application for restoration is not maintainable. As per the Motor Vehicles Legislation, driver of the offending vehicle is not a necessary party. It is true that the owner of the vehicle is a necessary party and in his absence, MACP cannot be proceeded.

8. In view of the aforesaid discussion, I am of the opinion that the learned Tribunal has committed serious error of law as well as on facts by not allowing the application for restoration. The learned Tribunal ought to have appreciated the fact that Motor Vehicles Act is a social benevolent legislation drafted in favour of the

victims of the road accident and heirs and legal representatives of the victims of road accident and, therefore, they cannot be deprived of their valuable right to receive compensation without adjudicating upon the matter and without considering the application on merits.

9. In the premise, this Appeal succeeds and, therefore, it is allowed. However, with no order as to costs. The order recorded by learned Motor Accident Claims Tribunal (Aux.), Banaskantha at Palanpur, in Civil Misc. Application No. 1 of 1997 dismissing the said application, is quashed and set aside and the said application is hereby allowed. Consequently, MACP No. 429 of 1987 is restored to its original file.

10. MACP No. 429 of 1987 is filed in the year 1987 and it is now 12 years old. Therefore, the learned Tribunal is directed to give top priority by giving day-to-day hearing of the said petition and try to dispose of the same as early as possible and preferably within a period of six months from the receipt of the writ of this order.

(karan)